

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 140

Introduced by Assembly Member Dickinson

January 17, 2013

An act to add Section 86 to the Probate Code, and to amend Section 15610.30 of, and to add Section 15610.70 to, the Welfare and Institutions Code, relating to undue influence.

LEGISLATIVE COUNSEL'S DIGEST

AB 140, as amended, Dickinson. Undue influence.

Existing law provides that financial abuse of an elder or dependent adult occurs when, among other instances, a person or entity takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined.

Existing law makes failing to report, or impeding or inhibiting a report of, among other things, financial abuse of an elder or dependent adult, in violation of certain reporting requirements a misdemeanor. Existing law also makes it a misdemeanor for any caretaker of an elder or dependent adult to violate any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult.

This bill would change the definition of undue influence to mean excessive persuasion that causes another person to act or refrain from acting and results in inequity. ~~In~~ *The bill would require, in determining whether the result was produced by undue influence, the vulnerability of the victim, the influencer's apparent authority, the actions or tactics used by the influencer, and the equity of the result shall to be considered.*

The bill would specify that nothing in these provisions be construed to imply that an inequitable result, without more, will constitute undue influence or excessive persuasion.

By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law prohibits the use of undue influence and establishes protections for individuals unable to resist undue influence in various areas of the law, including wills, trusts, and conservatorships.

This bill would define undue influence for those purposes without superseding or interfering with the common law of undue influence.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 86 is added to the Probate Code, to read:
- 2 86. "Undue influence" has the same meaning as defined in
- 3 Section 15610.70 of the Welfare and Institutions Code. It is the
- 4 intent of the Legislature that this section supplement the common
- 5 law *meaning* of undue influence without superseding or interfering
- 6 with the operation of that law.
- 7 SEC. 2. Section 15610.30 of the Welfare and Institutions Code
- 8 is amended to read:
- 9 15610.30. (a) "Financial abuse" of an elder or dependent adult
- 10 occurs when a person or entity does any of the following:
- 11 (1) Takes, secretes, appropriates, obtains, or retains real or
- 12 personal property of an elder or dependent adult for a wrongful
- 13 use or with intent to defraud, or both.
- 14 (2) Assists in taking, secreting, appropriating, obtaining, or
- 15 retaining real or personal property of an elder or dependent adult
- 16 for a wrongful use or with intent to defraud, or both.
- 17 (3) Takes, secretes, appropriates, obtains, or retains, or assists
- 18 in taking, secreting, appropriating, obtaining, or retaining, real or
- 19 personal property of an elder or dependent adult by undue
- 20 influence, as defined in Section 15610.70.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

(d) For purposes of this section, “representative” means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

(2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

SEC. 3. Section 15610.70 is added to the Welfare and Institutions Code, to read:

15610.70. (a) “Undue influence” means excessive persuasion that causes another person to act or refrain from acting and results in inequity. In determining whether the a result was produced by undue influence, all of the following shall be considered:

(1) The vulnerability of the victim, including, but not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency.

(2) The influencer’s apparent authority, including, but not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.

(3) The actions or tactics used by the influencer, including, but not limited to, controlling necessities, medication, the victim’s interactions with others, or access to information, sleep deprivation, use of affection, intimidation, or coercion, initiation of changes in personal or property rights, use of haste or secrecy in effecting

1 those changes, effecting changes at inappropriate times and places,
2 or claims of expertise in effecting changes.

3 ~~(d)~~

4 (4) The equity of the result, including, but not limited to, the
5 economic consequences to the victim, any divergence from the
6 victim's prior intent or course of conduct or dealing, the
7 relationship of the value conveyed to the value of any services or
8 consideration received, or the appropriateness of the change in
9 light of the length and nature of the relationship.

10 (b) *Nothing in this section shall be construed to imply that an*
11 *inequitable result, without more, establishes the element of undue*
12 *influence or excessive persuasion.*

13 SEC. 4. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.